

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 04-2503-RDR-JPO
	)	
EDWARD SHAW, et al.	)	
	)	
Defendants.	)	
_____	)	

**CONSENT DECREE**

**I. BACKGROUND**

A. The United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter against Edward Shaw and ESCM and Associates, Inc. (“Settling Defendants”), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken in connection with the release or threatened release of hazardous substances at the Easy Serve Oil Refinery Superfund Site in Shallow Water, Kansas.

B. Settling Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

C. The United States has reviewed the Financial Information submitted by Settling Defendants to determine whether Settling Defendants are financially able to pay response costs

incurred and to be incurred at the Site. Based upon this Financial Information, identified in Appendix A, the United States has determined that Settling Defendants do not have the ability to pay response costs.

D. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their heirs, successors and assigns. Any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

#### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. “Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- c. “DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- d. “EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- e. “Effective Date” shall mean the effective date of this Consent Decree as provided by Section XIV.
- f. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. “Financial Information” shall mean those financial documents identified in Appendix A.
- h. “Paragraph” shall mean a portion of this Consent Decree identified by an

Arabic numeral or an upper or lower case letter.

i. “Parties” shall mean the United States and the Settling Defendants.

j. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

k. “Settling Defendants” shall mean Edward Shaw and ESCM and Associates, Inc.

l. “Site” shall mean the Easy Serve Superfund Site located in Shallow Water, Kansas and depicted generally on the map attached as Appendix B.

m. “United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to resolve their liability for the Site as provided in the Covenant Not to Sue by the United States in Section VI, and subject to the Reservations of Rights by United States in Section VII.

#### **VI. COVENANT NOT TO SUE BY THE UNITED STATES**

5. Except as specifically provided in Section VII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. This covenant not to sue is conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendants. If the Financial Information is subsequently determined by EPA to be false or, in any material respect,

inaccurate, this covenant not to sue shall be null and void. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

## **VII. RESERVATION OF RIGHTS BY UNITED STATES**

6. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 5. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Settling Defendants' ownership or operation of the Site, or upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendants; and
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

7. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the

Financial Information provided by Settling Defendants, or the financial certification made by Settling Defendants in Paragraph 14, is false or, in any material respect, inaccurate.

### **VIII. COVENANT NOT TO SUE BY SETTling DEFENDANTS**

8. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.

§§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Kansas, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

9. Except as provided in Paragraph 11 (Waiver of Claims) and Paragraph 13 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 6 (c) - (e), but only to the extent that Settling Defendants' claims arise from the same response actions taken or to be taken and all response costs sought by the United States pursuant to the applicable reservation.

10. Nothing in this Consent Decree shall be deemed to constitute approval or

preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

11. Settling Defendants agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person in the event such person first asserts, and for so long as such person pursues, a claim or cause of action relating to the Site against Settling Defendants.

#### **IX. EFFECT OF SETTLEMENT**

12. Except as provided in Paragraph 11, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 11, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

13. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent

proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by the United States set forth in Section VI.

#### **X. CERTIFICATION**

14. By signing this Consent Decree, Settling Defendants certify that, to the best of their knowledge and belief, they have:

a. Fully complied with any and all EPA requests for documents or information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e); and

b. Submitted to the United States Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to the United States and the time Settling Defendants execute this Consent Decree.

#### **XI. NOTICES AND SUBMISSIONS**

15. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.



As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ# 90-11-3-08329)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Director, Superfund Division  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, KS 6601

As to Settling Defendants:

Edward Shaw  
222 Thornberry Drive  
Pleasant Grove, Utah

## **XII. RETENTION OF JURISDICTION**

16. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

## **XIII. INTEGRATION/APPENDICES**

17. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is a list of the financial documents submitted to the United States by Settling Defendants.

Appendix B” is a map of the Site.

#### **XIV. EFFECTIVE AND TERMINATION DATES**

18. The Effective Date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Section XV.

#### **XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

19. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

20. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

#### **XVI. SIGNATORIES/SERVICE**

21. Each undersigned representative of Settling Defendants to this Consent Decree and the Chief/Deputy Chief, Environmental Enforcement Section for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

22. Settling Defendants hereby agrees not to oppose entry of this Consent Decree by

this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

23. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

#### **XVII. FINAL JUDGMENT**

24. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

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UNITED STATES DISTRICT JUDGE

**FOR THE UNITED STATES OF AMERICA:**

9/28/07

Date

ELLEN M. MAHAN  
Deputy Section Chief  
Environmental Enforcement Section Environment  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

10/5/07

Date

JAMES L. NICOLL  
U.S. Department of Justice  
Environmental Enforcement Section  
NOAA GC-DOJ DARC  
7600 Sand Point Way NE  
Seattle, Washington 98115  
(206) 526-6616  
[james.nicoll@usdoj.gov](mailto:james.nicoll@usdoj.gov)  
[efile\\_seattle.enrd@usdoj.gov](mailto:efile_seattle.enrd@usdoj.gov)

Date

MARTHA STEINCAMP  
Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, KS 66101

Date

LIZ HUSTON  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, KS 66101

**FOR THE UNITED STATES OF AMERICA:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
JAMES L. NICOLL  
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Environmental Enforcement Section  
NOAA GC-DOJ DARC  
7600 Sand Point Way NE  
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[efile\\_seattle.enrd@usdoj.gov](mailto:efile_seattle.enrd@usdoj.gov)

10/19/07  
Date

\_\_\_\_\_  
MARTHA STEINCAMP  
Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, KS 66101

10/18/07  
Date

\_\_\_\_\_  
LIZ HUSTON  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, KS 66101

10/19/07  
Date

CECILIA TAPIA

Director

Superfund Division

U.S. Environmental Protection Agency

Region VII

901 North Fifth Street

Kansas City, KS 66101

**FOR EDWARD SHAW AND ESCM AND  
ASSOCIATES, INC.**

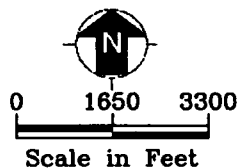
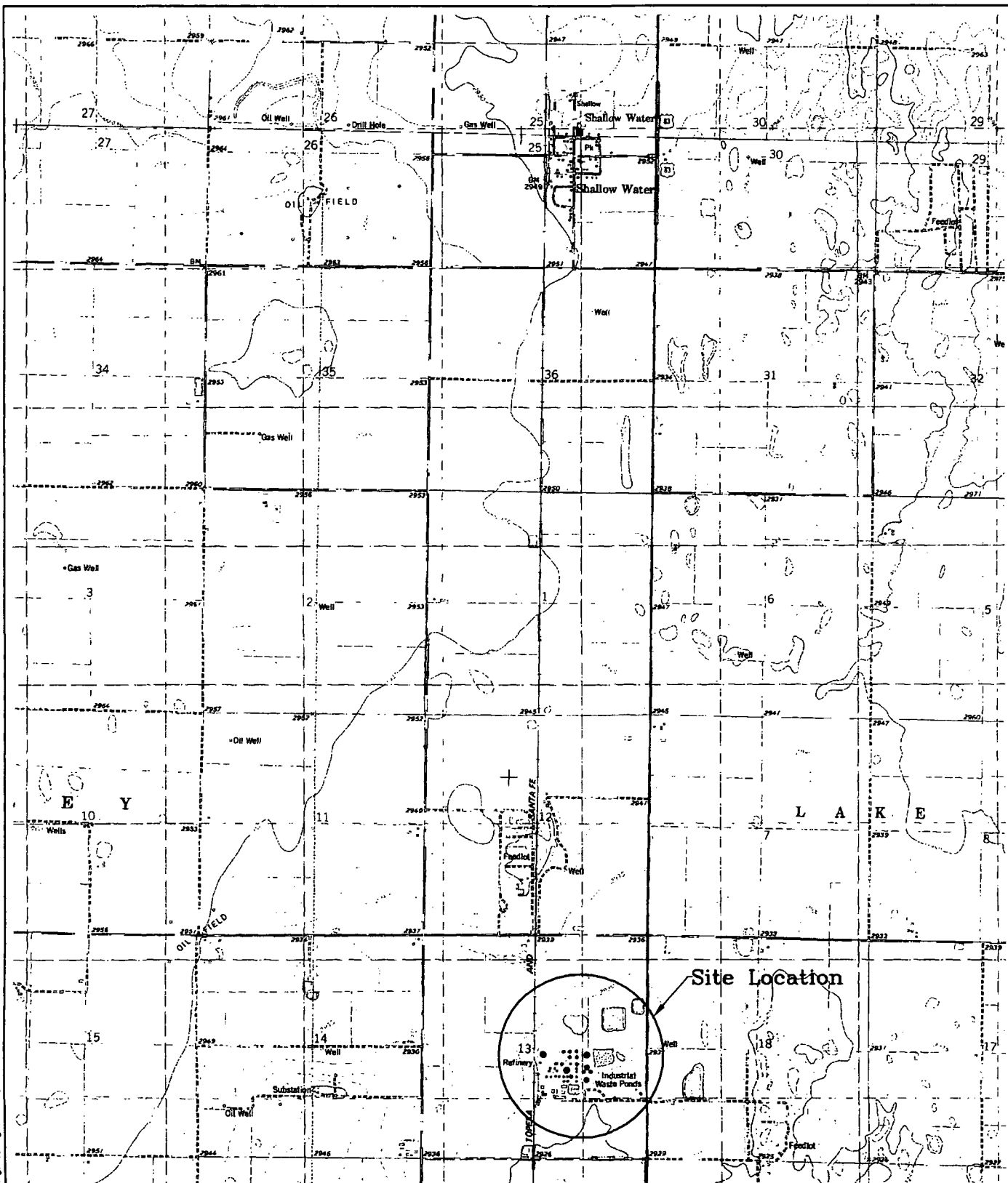
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**APPENDIX A: LIST OF FINANCIAL DOCUMENTS  
SUBMITTED TO THE UNITED STATES BY EDWARD SHAW AND  
ESCM AND ASSOCIATES, INC.**

1. Individual Ability to Pay Claim Financial Data Request Form, dated December 31, 2006
2. Tax Returns for Edward Shaw for years 2003, 2004, 2005 and 2006, with attached schedules
3. Declaration of Edward Shaw
4. Laurel Group Balance Sheet as of 3/19/2007
5. Residential Rental Agreement



## APPENDIX B



# Easy Serve Oil Refinery Asbestos Site Shallow Water, Kansas

Figure 1  
Site Location



Tetra Tech EM Inc.

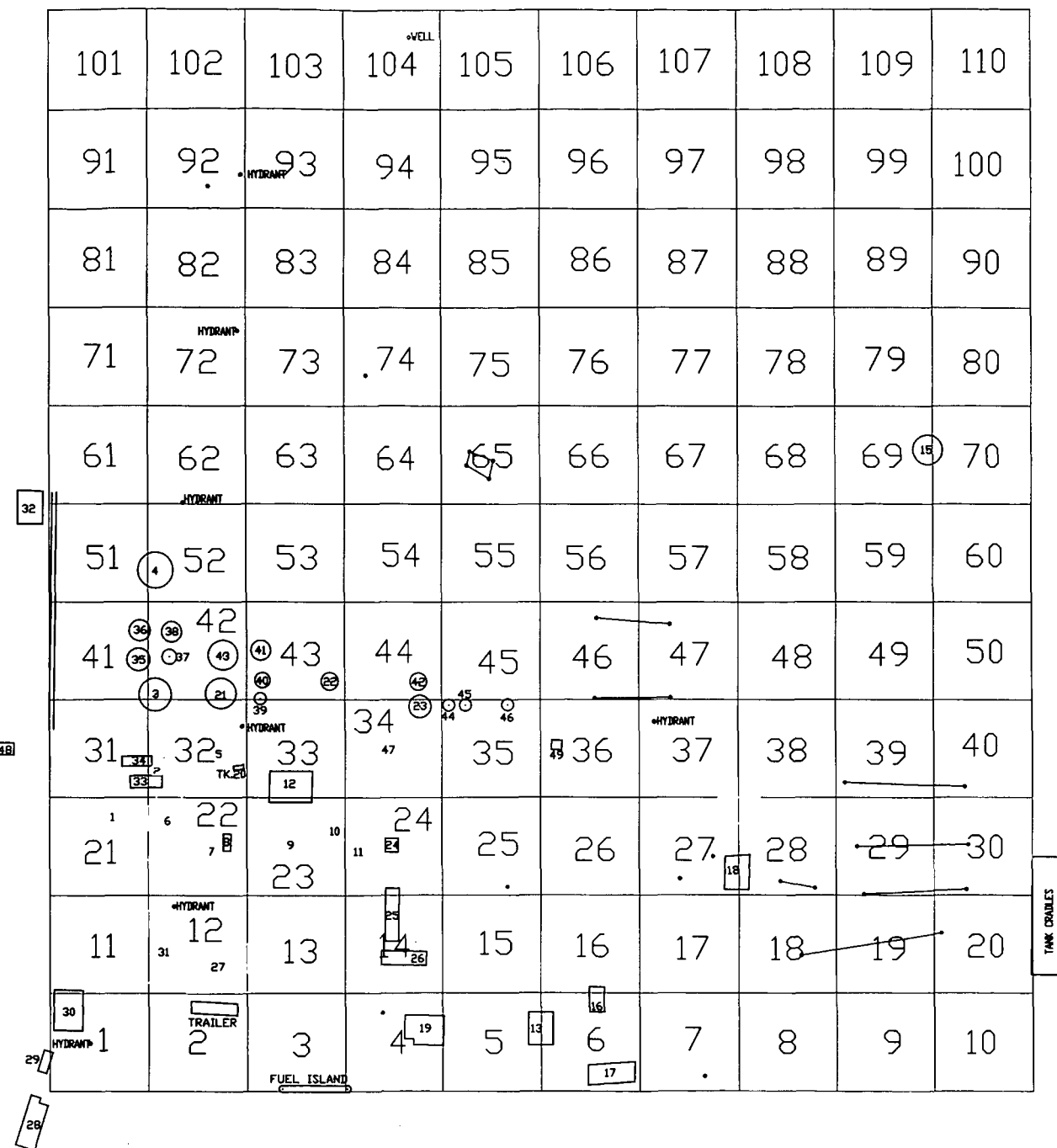
Date: 11/5/01

Drawn By: Roger Stull

Project No: G9011.L01.0053.01

Source: USGS Scott City, KS 7.5 Minute Topo Quad 1976  
USGS Shallow Water, KS 7.5 Minute Topo Quad 1976

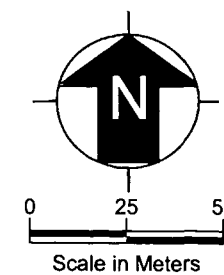
V:\START 2\Task 0053 - Easy Serve Oil Refinery Asbestos Site\Figures\EZSERVE.dwg



### Legend

- Asbestos abatement
- Onsite well
- Asbestos excavation pit
- Asbestos excavation trench
- 1 Numbered search cell

Source: Modified from EPA 2001



Easy Serve Oil Refinery Asbestos Site  
Shallow Water, Kansas

FIGURE 2  
Site Map

**Tt** Tetra Tech EM Inc.

Date: 12/05/01 Drawn By: Roger Stull Project No: G9011.L.01.0053.00